

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BLACKSTONE MEDICAL, INC.,

Plaintiff,

v.

OSIRIS THERAPEUTICS, INC.,

Defendant.

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Cause No. _____

**BLACKSTONE MEDICAL, INC.'S MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65, Blackstone Medical, Inc. ("Blackstone") files this Motion for Temporary Restraining Order and Preliminary Injunction against Osiris Therapeutics, Inc. ("Osiris"), and respectfully shows the Court as follows:

1. Blackstone moves this Court for a temporary restraining order, immediately enjoining Osiris from closing on its agreement to sell its Osteocel business to NuVasive, Inc. ("NuVasive"), which it intends to do on or soon after July 24, 2008. Blackstone further moves the Court to issue a preliminary injunction preserving the status quo pending arbitration of Blackstone's claims against Osiris in accordance with the dispute resolution procedures set forth in the parties' distribution agreement at issue.

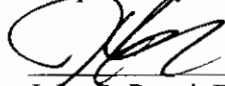
2. Blackstone is entitled to a temporary restraining order and preliminary injunctive relief because the evidence presented in support of this motion establishes the following elements: (1) Blackstone has a substantial likelihood of success on the merits; (2) there exists, absent the injunctive relief sought, a significant risk of irreparable harm; (3) the balance of hardships weighs in favor of granting injunctive relief; and (4) the public interests would be served or unaffected by granting the injunctive relief sought.

3. This motion is fully supported by and based on the reasons set forth in Blackstone's Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction and accompanying exhibits filed contemporaneously with this motion.

WHEREFORE, Blackstone Medical, Inc., respectfully requests that the Court issue a temporary restraining order and preliminary injunction preserving the status quo pending arbitration of Blackstone's claims in accordance with the Distribution Agreement's dispute resolution provisions and prohibiting Osiris from closing on its agreement to sell its Osteocel business to NuVasive until after the resolution of Blackstone's arbitrable claims. Blackstone further requests that it be awarded such other, alternative, or further relief, whether at law or in equity, to which it might be entitled.

Dated: July 23, 2008

Respectfully submitted,



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LOCAL RULE 7.1 CERTIFICATE OF CONFERENCE

Blackstone's CEO, Alan Milinazzo has conferred with Osiris's CEO, Randall Mills, in an effort to resolve the disputes that have given rise to this motion. Despite those efforts, the parties have been unable to reach a resolution without the need for court intervention.¹



J. Lizette Richards

CERTIFICATE OF SERVICE

I, J. Lizette Richards, do certify that, on this 23rd day of July, 2008, a copy of the foregoing document, along with attachments, is being served on Defendant Osiris Therapeutics, Inc., by mailing same via overnight delivery to its registered agent, The Corporation Trust Incorporated, located at 300 E. Lombard Street, Baltimore, Maryland 21202.



J. Lizette Richards

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¹(Milinazzo Decl ¶¶2-4, attached to Mem. In Support of Mot. for TRO and Prelim. Inj. at Ex. C.)